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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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10/540,978

06/27/2005

Yoshikatsu Ichimura

03500.017987

9533

5514 7590 03/19/2007
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EXAMINER

READY, BRYAN

ART UNIT

PAPER NUMBER

2852

MAIL DATE

DELIVERY MODE

03/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|---|--------------------------------------|--|--|
| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/540,978 | Applicant(s) ICHIMURA ET AL. | |
| | Examiner Bryan P. Ready | Art Unit 2852 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Applicants arguments not convincing; see attached Office Action.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 26 February 2007 have been fully considered but they are not persuasive.

Applicants assert that they have interpreted the Office Action to indicate "Williams' electrodes 32 and 34 rotate around a line that runs through transducer 36 and the center point of Figure 3B". Examiner asserts that this is one acceptable way to describe the rotated/oscillatory motion associated with Figure 2 of Williams. Applicants argue that 'contrary to the Office Action's assertion, Williams' Figures 3A to 3C show electrodes 32 and 34 moving from right (Figure 3A) to left (Figure 3C) across the center point of Figure 3B'. Accordingly, Applicants argue, Figures 2, 3A, 3B, and 3C do not disclose an oscillating body axially supported by a support member such that the oscillating body oscillates about the support member.

In response, Examiner respectfully disagrees with Applicant's assessment of the Williams' disclosure. Specifically, Examiner asserts Figure 2 of Williams discloses an oscillating body (32 and 34) axially supported by a support member (36) such that the oscillating body (32 and 34) oscillates about the support member (36). Although the oscillatory motion is significantly planar, with respect to test surface (20), a certain amount of deflection to and away from test surface (20) is understood from the mechanics of the setup as displayed in Figure 2. Although not directly observed from Figures 3A and 3C, part of the oscillating body, specifically, element 34, is understood

to be deflected behind element 32 in Figure 3A, and likewise, element 32 is understood to be deflected behind element 34 in Figure 3C.

Additionally, Applicants assert that 'the Office Action asserts a combination of Williams and Werner that allegedly would disclose a support member is a torsion spring'. Applicants discuss particular elements of the disclosure of Werner, associated with Figure 2A, and address, for example, the oscillating motion indicated by arrows 40. However, Applicants do not specifically address the torsion member 36 of Werner, or why they believe the combination of Williams and Werner is inappropriate.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

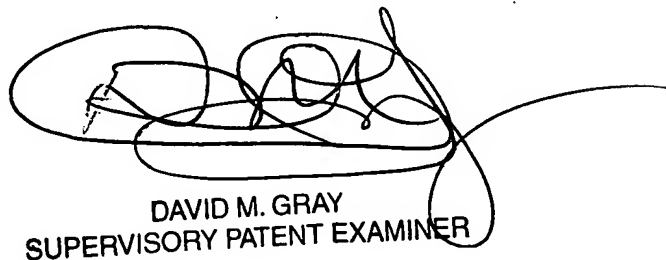
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan P. Ready whose telephone number is (571) 272-9018. The examiner can normally be reached on Mon.-Fri., 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Gray can be reached on (571) 272-2119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BPR



DAVID M. GRAY
SUPERVISORY PATENT EXAMINER